

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Dana Zimmerman

:

CIVIL ACTION

v.

USAA Insurance Agency, Inc.

:

:

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255.
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits.
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2.
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos.
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks.

02/11/2016

Date

215-550-6553

Brandon A. Swartz

Attorney-at-law

215-550-6557

Plaintiff, Dana Zimmerman

Attorney for

bswartz@swartzculleton.com

Telephone

FAX Number

E-Mail Address

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Dana Zimmerman

(b) County of Residence of First Listed Plaintiff Bucks, PA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Swartz Culleton PC-547 E. Washington Ave, Newtown, PA 18940

**DEFENDANTS**

USAA Insurance Agency, Inc.

County of Residence of First Listed Defendant Bexar, TX

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)                        |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
	<input checked="" type="checkbox"/> 1	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/> 4
					<input type="checkbox"/> 5
				<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<b>IMMIGRATION</b>	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
			<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 950 Constitutionality of State Statutes
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1331Brief description of cause:  
Underinsured Motorist**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

in excess of \$75,000

CHECK YES only if demanded in complaint  
JURY DEMAND:  Yes  No**VIII. RELATED CASE(S)**

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/11/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 201 Diana Drive, Chalfont, PA 18914

Address of Defendant: 9800 Fredricksburg Road, San Antonio, TX 78288

Place of Accident, Incident or Transaction: Doylestown, PA

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes  No

Does this case involve multidistrict litigation possibilities?

Yes  No

*RELATED CASE, IF ANY:*

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No

**CIVIL: (Place ✓ in ONE CATEGORY ONLY)**

A. *Federal Question Cases:*

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations

7.  Civil Rights

8.  Habeas Corpus

9.  Securities Act(s) Cases

10.  Social Security Review Cases

11.  All other Federal Question Cases

(Please specify)

B. *Diversity Jurisdiction Cases:*

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases

(Please specify)

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

I, Brandon A. Swartz,

, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 02/11/2016

78344

Attorney-at-Law

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 02/11/2016

78344

Attorney-at-Law

Attorney I.D.#

CIV. 609 (6/08)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DANA ZIMMERMAN	:	
	:	Civil Action No.
<i>Plaintiff</i>	:	
v.	:	
USAA INSURANCE AGENCY, INC.	:	
	:	
<i>Defendant.</i>	:	<b>JURY TRIAL DEMANDED</b>
	:	

**CIVIL ACTION COMPLAINT**

**I. PARTIES**

1. Plaintiff, Dana Zimmerman, is an adult individual and citizen of the Commonwealth of Pennsylvania, residing therein at 210 Diana Drive, Chalfont, PA 18914.

2. Defendant, USAA Insurance Agency, Inc. ("USAA"), was and is now a business entity, believed to be a corporation, duly organized and existing under the laws of the State of Texas and authorized to conduct business and issue policies of insurance in the Commonwealth of Pennsylvania, with corporate headquarters and principal place of business located at 9800 Fredericksburg Road, San Antonio, TX 78288. Defendant is a citizen of Texas for purposes of diversity jurisdiction.

**II. JURISDICTION AND VENUE**

3. Jurisdiction is conferred upon this Court by virtue of the parties' diversity of citizenship pursuant to 28 U.S.C. § 1332.

4. The amount in controversy in this action is in excess of seventy-five thousand (\$75,000.00) dollars, exclusive of costs and fees.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the within claims occurred within the District.

**III. STATEMENT OF CLAIMS**

6. At all times material herein, the Defendant acted by and through its agents, servants, employees, workmen and/or other representatives, who were, in turn, acting within the course and scope of their employment, agency and/or service for the same and under the direct control of the Defendant.

7. At all times material hereto, Plaintiff Dana Zimmerman, was insured by Defendant, USAA, under a policy of automobile insurance which provided for underinsured motorist benefits, policy number 002082756C71014.

8. On or about June 12, 2015, while the aforementioned policy was in full force and effect, Plaintiff Dana Zimmerman was a passenger in a motor vehicle owned and operated by Richard Zen Baker, which was struck by a motor vehicle operated by Timothy O'Connor, while he was traveling on Pebble Hill Road in Doylestown, Pennsylvania.

9. At the time of the aforementioned accident, the vehicle operated by Richard Zen Baker was insured under a policy of automobile insurance through Erie Insurance Company.

10. At the time of the aforementioned accident, the vehicle operated by Timothy O'Connor was insured under a policy of automobile insurance through Geico Insurance Agency.

11. The aforementioned accident was caused solely by the negligence and carelessness of Timothy O'Connor and Richard Zen Baker and was not the result of the actions or inactions of the Plaintiff.

12. By reason of the aforesaid negligence and carelessness of Timothy O'Connor and Richard Zen Baker, Plaintiff Dana Zimmerman suffered severe and permanent injuries, including,

but not limited to, T7 Chance fracture with unstable thoracic spine requiring surgical repair, maxillary alveolar fracture with subluxated teeth requiring surgical repair, right humeral shaft fracture requiring surgical repair, rib fracture, T6 transverse process fracture, pulmonary contusion, and postconcussion syndrome, as well as aches, pains, mental anxiety and anguish, and a severe shock to her entire nervous system. Plaintiff has in the past and will in the future undergo severe pain and suffering as a result of which she has in the past and will in the future be unable to engage in her usual activities, all to her great loss and detriment.

13. As a further result of the accident, the Plaintiff has or will be obliged to receive and undergo medical care and attention and to expend various sums of money and to incur various expenses for the injuries she suffered, and she may be obliged to continue to expend such sums or incur such expenditures for an indefinite period of time in the future.

14. As a further result of the accident, the Plaintiff has or may suffer a severe loss of her earnings and/or earning power, and he may incur such loss for an indefinite period of time in the future.

15. As a direct and reasonable result of the accident aforementioned, the Plaintiff may hereafter incur other financial expenses or losses which do or may exceed the amounts which he may otherwise be entitled to recover under and pursuant to the Pennsylvania Motor Vehicle Financial Responsibility Law, 75 Pa. C. S. § 1701 et. seq. as amended, for which she claims damages herein.

16. Further, by reason of the aforesaid accident, Plaintiff has and/or may hereinafter incur other financial expenses all in an effort to treat and cure herself of the injuries sustained in the aforesaid accident.

17. As a further result of the accident, Plaintiff has or may have suffered injuries resulting in the permanent loss of use of a bodily function, dismemberment, and/or scarring, which may be in full or part cosmetic disfigurements which are or may be permanent, irreparable and severe.

18. Notice of the aforesaid covered loss and Plaintiff's intent to pursue underinsured motorist benefits was provided to the Defendant in a prompt and timely manner by the Plaintiff and, at all times relevant hereto, the Plaintiff fully complied with all of the terms and conditions required by the policy.

19. Plaintiff demands benefits in the amount of the Policy limits.

20. Defendant, despite demand for benefits under the Policy, has refused, without legal justification or cause, and continues to refuse, to pay to the Plaintiff monies owed for the injuries suffered as a result of the aforesaid loss.

21. As a result of the Defendant's failure and refusal to pay reasonable benefits to the Plaintiff as required under the Policy, Plaintiff has suffered losses and damages.

**COUNT I**  
**DANA ZIMMERMAN v. USAA INSURANCE AGENCY, INC.**  
**BREACH OF CONTRACT**

22. Plaintiff hereby incorporates by reference paragraphs one (1) through twenty (20) of the within Complaint, as though the same were fully set forth at length herein.

23. Defendant, USAA, has failed to promptly offer payment of the reasonable and fair value of the claim to Plaintiff.

24. Defendant has failed to reasonably investigate Plaintiff's claim such that a thorough and proper inquiry would have revealed that Plaintiff suffered serious and permanent injuries caused by the aforementioned accident described in this Complaint.

25. Defendant, USAA, owes Plaintiff a fiduciary, contractual and statutory obligation to investigate, evaluate and negotiate Plaintiff's underinsured motorist claim in good faith and to arrive at a prompt and fair and equitable settlement.

26. For the reasons set forth above, Defendant has violated its obligations under the policy of insurance.

27. Defendant, USAA, owes Plaintiff the policy limit in underinsured motorist benefits pursuant to the terms of the insurance policy which is the subject of this case and known to USAA.

28. Despite submission of reasonable proof and demand for full and complete payment with respect to Plaintiff's aforesaid loss, the Defendant has not paid to Plaintiff all of the policy benefits to which she is entitled under the policy.

29. Defendant's denial of coverage was made without a reasonable basis in fact.

30. Defendant's refusal to indemnify Plaintiff's loss constitutes a breach of the insurance contract.

WHEREFORE, Plaintiff, Dana Zimmerman, demands that the Court enter judgment in favor of Plaintiff and against Defendant, USAA Insurance Agency, Inc., and award compensatory damages in an amount in excess of One Hundred Fifty Thousand Dollars (\$150,000.00), together with interest, costs and attorneys' fees as may be adequate, just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims and issues.

Respectfully submitted,

**SWARTZ CULLETON PC**

By:

Brandon A. Swartz, Esquire  
Identification No.: 78344  
Matthew E. Gallagher, Esquire  
Identification No.: 316086  
547 E. Washington Ave.  
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Attorneys for Plaintiff,  
Dana Zimmerman

Date: February 11, 2016